

February 3, 2022

Via ECF

Honorable Jesse Furman
United States District Judge
Southern District of New York
40 Centre Street, Room 2202
New York, New York 10007

Re: *City of Philadelphia, et al. v. Bank of Am. Corp., et al.*, 19-cv-1608 (JMF)

Dear Judge Furman:

Pursuant to the Amended Civil Case Management Plan and Scheduling Order (“Scheduling Order”) (Dkt. No. 214) and the Court’s Order dated February 1, 2022 (Dkt. No. 254), Counsel for Plaintiffs and Defendants jointly submit this letter to provide the Court a summary of the case status prior to the conference currently scheduled for February 10, 2022.

February 10, 2022 Status Conference

The parties believe that the Court should proceed with a telephonic status conference, as it will provide an opportunity for the parties to address any outstanding questions this Court may have concerning discovery, existing deadlines, or outstanding motions, including those filed on Tuesday, February 1.

Should the Court choose to hold a status conference, the parties are available from 9:00 a.m. to 10:30 a.m. on February 9 and from 9:00 a.m. to 11:30 a.m. or after 1:30 p.m. on February 10.

Existing Deadlines and Status of Discovery

Plaintiffs substantially completed their respective document productions by the January 21, 2022 deadline in the Scheduling Order.¹ Defendants substantially completed their respective document productions by the January 21, 2022 deadline² with the exception of RBC, which is still in the process of completing its document productions as it has had to work through technical difficulties in extracting responsive Electronically Stored Information. The parties are endeavoring to complete good faith meet and confer negotiations regarding remaining document discovery disputes (which could, of course, result in further limited document productions) and, in accordance with the Court’s Individual Rules, will promptly raise with the Court any additional disputes that require judicial intervention.

Plaintiffs and Defendants have all substantially completed their production of transactional

¹ After finalizing custodian and search term negotiations with Defendants in December and January, 2022, newly-added Plaintiff the San Diego Association of Governments (“SANDAG”) substantially completed its production on February 3.

² Plaintiffs and the Bank of America Defendants agreed to a 10-day extension of the substantial completion deadline as a compromise in exchange for additional document requests from those Defendants. The Bank of America Defendants substantially completed their document production on January 31, 2022.

data. The parties continue to review and evaluate one another's data productions and explore follow-up questions and issues.

Fact discovery, including all depositions of fact witnesses, is scheduled to be completed by April 25, 2022. The parties are meeting and conferring in good faith concerning a stipulated modification to the presumptive deposition limit under Rule 30(a)(2)(A)(i). The parties are moving forward diligently and in good faith to meet all the current scheduling deadlines. It is Defendants' current belief that the current schedule allows enough time for the completion of discovery; although Plaintiffs are equally committed to meeting that deadline, they believe that, given all the activity contemplated over the next three months, it is possible the schedule will need to be adjusted.

The deadline for Plaintiffs' motion for class certification and supporting expert reports is July 20, 2022. Plaintiffs are working diligently to meet this deadline. Should Plaintiffs believe that an extension is necessary, they will notify the Court promptly.

Outstanding Motions

On September 14, 2021, Defendants filed a joint motion to dismiss certain claims in the Amended Consolidated Class Action Complaint (Dkt. No. 231). Plaintiffs filed an opposition to Defendants' motion on October 25, 2021, and Defendants filed a reply on November 15, 2021. The motion is fully submitted.

On February 1, 2022, in the District Courts of Minnesota and Delaware, Plaintiffs filed motions to transfer to this Court, or in the alternative to quash, non-party document subpoenas served by Defendants in those jurisdictions seeking documents from one of Plaintiffs' non-testifying litigation consultants. The motions are not currently scheduled to be fully submitted in those courts until approximately February 17, 2022.

On February 1, 2022, Defendants filed a joint letter-motion requesting a conference concerning Plaintiffs' refusal to produce certain documents received from fact witnesses retained by Plaintiffs as non-testifying consultants. Plaintiffs' opposition letter is due February 4, 2022.

On February 1, 2022, Defendants filed a joint letter-motion requesting a conference concerning Plaintiffs' refusal to produce certain documents related to Defendants' anticipated statute of limitations arguments. Plaintiffs' opposition letter is due February 4, 2022.

Settlement

There have been no settlement discussions to date. Given the early stage of the case, the parties believe Court facilitation of settlement discussions would be premature at this time.

Length of Trial

Plaintiffs have demanded a trial by jury. Given the current stage of the case, it is difficult for the parties to provide the Court with a reliable estimate of the length of a trial, but we would expect the trial to last at least four weeks.

Summary Judgment

Plaintiffs and Defendants expect that they will file motions for summary judgment.

Respectfully submitted,

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/s/ David H. Wollmuth
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Skadden, Arps, Slate,
Meagher & Flom LLP

/s/ Jayant W. Tambe
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/s/ Robert D. Wick
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/s/ Andrew Frackman
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/s/ Jamie Dycus
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Wilmer Cutler Pickering
Hale & Dorr LLP

/s/ Jane O'Brien
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Paul, Weiss, Rifkind
Wharton & Garrison LLP

/s/ Adam S. Hakki
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cc: All counsel of record (via ECF)

The pretrial conference scheduled for February 10, 2022, is RESCHEDULED to **February 9, 2022, at 9:15 a.m.** The parties should be prepared to address the discovery issues raised by Plaintiffs in ECF Nos. 255-56, in addition to the contents of this letter. The conference will be held remotely by telephone in accordance with Rule 2(B) of the Court's Individual Rules and Practices in Civil Cases, available at <https://nysd.uscourts.gov/hon-jesse-m-furman>. The parties should join the conference by calling the Court's dedicated conference line at (888) 363-4749 and using access code 542-1540, followed by the pound (#) key. Counsel should review and comply with the rules regarding teleconferences in the Court's Individual Rules and Practices in Civil Cases, including Rule 2(B) (i), which requires the parties, no later than 24 hours before the conference, to send a joint email to the Court with a list of counsel who may speak during the teleconference and the telephone numbers from which counsel expect to join the call. SO ORDERED.

